

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

DAVID J. SCOTT,

Plaintiff,

Case Number: 03-75123

v.

HON. GEORGE CARAM STEEH

B. STONE, ET AL.,

Respondent.

ORDER DENYING PLAINTIFF'S LETTER-MOTION TO RETURN FILING FEE

Plaintiff David J. Scott filed a *pro se* civil rights complaint pursuant to 42 U.S.C. § 1983. He sought leave to proceed without prepayment of the filing fee. The Court dismissed the complaint pursuant to the “three strikes” provision of the Prison Litigation Reform Act, 28 U.S.C. § 1915(g), because Plaintiff had previously filed in federal court three civil rights complaints which had been dismissed as frivolous or for failure to state a claim upon which relief may be granted. The Court provided that, if Plaintiff wished to pursue the allegations contained in the complaint, he was required to submit the \$150.00 filing fee within thirty days. Plaintiff submitted the \$150.00 filing fee, and the matter was reopened. Petitioner has now filed a letter-motion requesting that his \$150.00 filing fee be returned to him.

Plaintiff previously filed another *pro se* civil rights complaint and application to proceed without prepayment of the filing fee in this Court. That matter, Case Number 03-70523, was assigned to the Honorable Lawrence P. Zatkoff. On February 14, 2003, Plaintiff's request to proceed without prepayment of the filing fee was granted. Plaintiff, however, previously had filed three civil rights complaints in the Western District of Michigan which had been dismissed

as frivolous. Thus, on April 14, 2003, the Court dismissed Plaintiff's complaint pursuant to the "three-strikes" rule. *See* 28 U.S.C. § 1915(g). Following dismissal of his complaint, Plaintiff filed a Motion for Relief from Judgment asking the Court to reinstate his Complaint if he paid the requisite filing fee. On June 11, 2003, the \$150.00 filing fee was paid on behalf of Plaintiff. *See* Docket Entry No. 11. On July 7, 2003, this Court issued an Order denying Plaintiff's Motion for Relief from Judgment and directing the Court to return the \$150.00 filing fee paid on June 11, 2003, to the entity that paid the fee for Plaintiff, Foss Police Equipment and Communications.

Plaintiff claims that the \$150.00 filing fee, paid in Case No. 03-70523, was never returned to him. He, therefore, requests that the filing fee paid in that case be applied to the pending case, and the \$150.00 filing fee paid in this case on February 14, 2004, be returned to him. The \$150.00 filing fee, paid in Case No. 03-70523, was refunded to Foss Equipment and Communications as follows: U.S Treasury Check No. 546071 in the amount of \$90.00 was issued on February 3, 2004, and U.S. Treasury Check No. 546216 in the amount of \$60.00 was issued on February 4, 2004. The Court, therefore, will not apply the filing fee paid in Case No. 03-70523 to the pending case.

Accordingly, the Court **DENIES** Plaintiff's letter-motion to return filing fee.

SO ORDERED.

s/George Caram Steeh
GEORGE CARAM STEEH
UNITED STATES DISTRICT JUDGE

Dated: April 20, 2005

CERTIFICATE OF SERVICE

Copies of this Order were served on the attorneys of record on April 20, 2005, by electronic and/or ordinary mail.

s/Josephine Chaffee
Secretary/Deputy Clerk